

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2590 of 2000

to

FIRST APPEAL No 2686 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ADDL. LAND ACQUISITION OFFICER

Versus

ATMARAM GALABHAI THRO' HEIR CHETANKUMAR ATAMARA

Appearance:

FIRST APPEAL Nos.2590 to 2639 of 2000

MR AD OZA, GOVERNMENT PLEADER for Appellants

MR GM AMIN for Respondent No. 1

FIRST APPEAL Nos.2640 to 2664 of 2000

MS NANDINI JOSHI, AGP for Appellants

MR GM AMIN for Respondent No. 1

FIRST APPEAL Nos.2665 to 2686 of 2000

MR RC KODEKAR, AGP for Appellants

MR GM AMIN for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.C.PATEL

Date of decision: 17/10/2000

ORAL (COMMON) JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

Admitted. Mr. G.M. Amin, learned counsel waives service of notice on behalf of the claimants in each appeal. Having regard to the facts of the case and in view of the joint request made by the learned counsel for the parties, all the appeals are taken up for final hearing today.

2. These appeals which are filed under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908 are directed against common judgment and award dated November 5, 1999 rendered by the learned 2nd Extra Assistant Judge and Special Judge (LAR), Ahmedabad (Rural), Mirzapur in Land Acquisition Case Nos.89/96 to 108/96, 890/95 to 928/95, 792/96 to 815/96 and 919/96 to 932/96. We may state that the Land Acquisition Officer by making awards dated July 31, 1993, July 26, 1993 and August 30, 1993 had determined compensation payable to the claimants. All the above numbered Land Acquisition Cases were consolidated with Land Acquisition Case No.92/96 which was treated as the main case and in which the parties had led common evidence. As common questions of fact and law arise for our determination in these appeals, we propose to dispose them of by this common judgment.

3. The Executive Engineer, Narmada Project, Ahmedabad had proposed to the State Government to acquire agricultural lands of village Bhavda, Taluka Dascroi, District Ahmedabad for the public purpose of construction of Narmada Canal. On scrutiny of the said proposal, the State Government was satisfied that agricultural lands of village Bhavda were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Land Acquisition Act, 1894 (the 'Act' for short) was issued which was published in the Government Gazette on August 29, 1991. Thereafter, those persons whose lands were sought to be acquired were served with notices and they had filed objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer had

submitted his report to the State Government, as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that agricultural lands of village Bhavda which were specified in the Notification published under Section 4(1) of the Act were needed for the public purpose of construction of Narmada Canal. Therefore, declarations were made under Section 6 of the Act which were published in the Official Gazette on December 19, 1991 and January 9, 1992. Thereafter, the interested persons were served with notices for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.30/- per sq.m.. Having regard to the materials placed before him, the Special Land Acquisition Officer by three different awards dated July 26, 1993, July 31, 1993 and August 30, 1993 offered compensation to the claimants at the rate of Rs.3/- per sq.m. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they accepted the amount of compensation under protest and required the Special Land Acquisition Officer to refer the matter to the court for determination of appropriate amount of compensation payable to them by submitting applications under Section 18 of the Act. Accordingly, references were made to the Ahmedabad District Court (Rural) at Mirzapur which were numbered as Land Acquisition Case Nos.89/96 to 108/96, 890/95 to 928/95, 792/96 to 815/96 and 919/96 to 932/96. In the reference applications, it was pleaded by the claimants that the village from which their agricultural lands were acquired had got all the facilities such as light, water, telephone, road, primary school etc. and therefore they were entitled to enhanced compensation. According to the claimants, all the claimants were taking crops such as moong, millet, rayda etc. in one year and as they were earning Rs.25,000/- to 30,000/- as net agricultural income per bigha per year, they were entitled to compensation at the rate of Rs.30/- per sq.m. What was pleaded by the claimants in the reference applications was that the acquired lands were irrigated lands and as the lands acquired had potential value, they were entitled to enhanced compensation, as claimed in the reference applications.

4. The Special Land Acquisition Officer, Narmada Project, Unit No.3 had filed written statement at Exh.11 controverting the averments made in the reference applications. In the said written statement, it was inter alia contended that the amount of compensation awarded by the Land Acquisition Officer was just and

therefore, the claimants were not entitled to get higher amount of compensation, as claimed in the reference applications.

5. The Executive Engineer, Narmada Project, Division No.3/4, Ahmedabad had contested the reference applications by filing written statement at Exh.12 contending inter alia that before fixing compensation payable to the claimants, the Land Acquisition Officer had taken into consideration the location of the lands acquired, prevailing market rates of the land, tenure of the lands acquired, area, level, nearby development etc. and therefore the claimants were not entitled to enhanced compensation.

6. Upon rival assertions of the parties, necessary issues for determination were raised by the Reference Court at Exh.13. On behalf of the claimants, witness Babubhai Ambalal Patel whose lands were also acquired was examined at Exh.33. He deposed before the court that village Bhavda had all the facilities such as water, light, school, telephone, cooperative societies and as irrigation facilities were available to the acquired lands, the claimants were entitled to higher compensation. The witness informed the court that the claimants were raising crop of millet, yield of which was 50 maunds per bigha and the rate of the said produce at the relevant time was Rs.100/- per maund. The witness also stated that the claimants were taking crops of rice, rayda, sheaves etc. and in view of the high rate of those commodities, each claimant was earning Rs.25,000/- to Rs.30,000/- as net agricultural income per bigha per year. The witness claimed before the court that agricultural lands from this very village were acquired for the public purpose of Mamkana-Udharoj-Bhavda road wherein the Reference Court had awarded compensation to the claimants at the rate of Rs.11.10 per sq.m. and as lands which were previously acquired were similar in all respects including fertility and productivity, the claimants are entitled to compensation on the basis of the said previous award. The witness produced previous award of the court relating to lands of this very village at Exh.17. The witness also produced copy of the previous judgment and award of the Reference Court at Exh.20 relating to agricultural lands of village Harniyav and claimed that as the lands which were acquired from village Harniyav were similar to the lands acquired in the present case, the claimants were also entitled to compensation on the basis of the said previous award. In his cross-examination the witness denied the suggestion that no relevant evidence was adduced before the Land

Acquisition Officer for claiming compensation. The witness admitted that he had no documentary evidence to establish his claim that each claimant was earning Rs.20,000/- to Rs.30,000/- as net agricultural income per bigha per year but maintained that all the claimants were earning substantial income from the sale of agricultural produces.

7. On behalf of the present appellants, witness Pallaviben Ghansyambhai who was discharging duties as Special Land Acquisition Officer, Narmada Sardar Sarovar Nigam was examined at Exh.169. This witness narrated the procedure which was undertaken by the State Government before acquiring the lands in question. The witness stated before the court that the claimants were called upon to produce bills relating to sale of agricultural produces but had not produced those bills at all. In cross-examination, she stated that she had taken over charge on July 17, 1999 and had not participated in acquisition proceedings relating to the lands acquired in the present case nor had she seen the acquired lands.

8. On behalf of the appellants, another witness Kamleshbhai Maganlal Rathod who was Deputy Executive Engineer, Narmada Yojana Department was examined at Exh.173. This witness stated before the court that before the lands were acquired a report was prepared by Shri K.C. Patel who was then discharging duties as Deputy Executive Engineer wherein tenure of the lands acquired, distance from bus stand and railway station etc. were mentioned. The witness admitted in his cross-examination that he had no knowledge about different crops which were being raised by the claimants on the acquired lands.

9. On appreciation of evidence led by the parties, the Reference Court deduced that previous award of Reference Court relating to agricultural lands of this very village produced at Exh.17 was comparable as well as relevant for determining market value of the lands acquired in the present cases. According to the Reference Court, previous award of Reference Court in relation to agricultural lands of village Harniyav which was produced at Exh.20 was not relevant when previous award for the lands acquired from this very village was available on record. Placing reliance on the previous award produced by the claimants at Exh.17 in relation to agricultural lands of this very village, the Reference Court by the impugned judgment and award has held that the claimants are entitled to get additional amount of compensation at the rate of Rs.18/- per sq.m. giving

rise to the present appeals.

10. Mr. A.D. Oza, learned Government Pleader as well as Ms. Nandini Joshi and Mr. R.C. Kodekar, learned Assistant Government Pleaders submitted that previous award produced by the claimants at Exh.17 was neither comparable nor relevant and could not have been made basis for awarding compensation to the claimants in the present cases. According to the learned counsel for the appellants, no reliable and cogent evidence was adduced by the claimants regarding relevancy of previous award of the Reference Court relating to lands of this very village and therefore, the appeals should be allowed. Mr. G.M. Amin, learned counsel for the claimants submitted that previous award of the Reference Court relating to agricultural lands of this very village is not only comparable but also relevant and therefore, just award passed by the Reference Court should not be disturbed by this court in these appeals.

11. We have heard the learned counsel for the parties and taken into consideration paper book supplied by the learned counsel for the claimants which includes oral as well as documentary evidence adduced by the parties before the Reference Court. The record of the case clearly indicates that the lands acquired were irrigated lands and irrigation facilities were available to the claimants as a result of which they were able to raise different crops such as moong, millet, rice, sheaves etc. Though it was admitted by the witness Babubhai that he had no documentary evidence to establish his claim that each claimant was earning Rs.20000/- to Rs.30000/- per bigha by way of net agricultural income, the fact that the lands acquired were irrigated lands and that different crops were being raised by the claimants thereon was never disputed by the appellants. In this case, the claimants have not based their claim for enhanced compensation either on sale instances or yield basis but have relied upon previous award of the Reference Court rendered in respect of agricultural lands of this very village. It is well settled that the award rendered by the Reference court in respect of similar lands and which has become final can be taken into consideration for the purpose of determining market value of the lands acquired subsequently from the same village or adjacent village. In the category of sales fall the awards by courts in previous cases of land acquisition. They are judgments in personam based on the balance of evidence in the case adduced by the parties. Price of land in vicinity in previous land acquisition proceedings can be treated as affording a good guide for

determination of compensation to be awarded for lands acquired subsequently. In assessing the market value of a piece of land, the price paid in other transactions relating to the lands in the neighbourhood must be of some value. What its value should be has to be determined by the court after consideration of the evidence on which the previous award is founded. The awards made by the Reference Court are at least relevant material and may be in the nature of admission with regard to the value of the lands on behalf of the State and if the lands involved in the awards are comparable lands and in reasonable proximity of the subsequently acquired lands, rates found in the said previous awards can be treated as reliable material to afford a basis to work upon for determination of compensation at a later date. Having regard to these principles, we will now proceed to consider the question whether previous award produced by the claimants at Exh.17 in relation to agricultural lands of this very village is comparable and relevant. Exh.17 indicates that several agricultural lands of village Bhavda, Taluka Dascroi, District Ahmedabad were acquired by the State Government for the public purpose of Mamkana-Underoj-Bhavda road pursuant to publication of Notification under Section 4(1) of the Act in the Official Gazette on June 28, 1984. Therein, the Land Acquisition Officer by his award dated April 20, 1987 had offered compensation to the claimants at the rate of Rs.1.10 paise per sq.m. as against the claim of Rs.20/- per sq.m. advanced by the claimants. Thereupon, references were sought and the Reference Court in Land Acquisition Nos. 67/91 to 79/91 by judgment and award dated October 19, 1993 had held that the claimants were entitled to additional compensation of Rs.10/- per sq.m. In the said case, it was noticed that the claimants were raising crops such as wheat, rayda, millet etc. on the acquired lands and before determining the amount of compensation, the Reference Court had taken into consideration previous award of the Reference Court rendered in respect of village Underoj which was produced at Exh.29 on the record of the said case. It was noticed by the Reference Court that the claimants of village Underoj were awarded compensation at the rate of Rs.12/per sq.m. but in view of the fact that village Underoj was on the back side of village Bhavda, the Reference Court was of the opinion that claimants of village Bhavda were entitled to additional compensation at the rate of Rs.10/- per sq.m. The evidence of Patel Babubhai Ambalal clearly shows that the lands which were previously acquired from this very village and which were subject matter of Exh.17 were similar in all respects to the lands acquired in the present case and the fertility

as well as productivity were also same. The assertion made by witness Babubhai on oath before the court that lands previously acquired from this very village were similar in all respects to the lands acquired in the present case was never challenged by the present appellants. Though two witnesses were examined on behalf of the appellants, it could not be established by the appellants that the lands which were previously acquired from this very village had better fertility or productivity than the lands acquired in these cases. Under the circumstances, we are of the opinion that no error was committed by the Reference Court in placing reliance on the previous award produced by the claimants at Exh.17 which related to agricultural lands of this very village. For placing reliance on previous award of this very village, the Reference Court has given cogent and convincing reasons in paragraph 20 of the judgment and the learned counsel for the appellants have failed to dislodge those reasons. Before placing reliance on previous award Exh.17, the Reference Court has also noticed the judgment of the Supreme Court and High court governing determination of compensation payable to the claimants on the basis of similar awards. We may state that in previous award Exh.17 Notification under Section 4(1) of the Act was published in the Government Gazette on June 28, 1984 whereas in the present case Notification under Section 4(1) of the Act was published in the Government Gazette on August 29, 1991. It is common knowledge that price of land increases with passage of time and market value of lands acquired cannot be freezed at the rate fixed for similar lands acquired few years ago. Moreover, the potential value of the lands acquired also cannot be ignored. Under the circumstances, the Reference Court was justified in granting reasonable increase in fixing price because of time lag between the Notifications published under Section 4(1) of the Act. On overall view of the matter, we are satisfied that a just and reasonable award has been passed by the Reference Court determining amount of compensation payable to the claimants. The amount determined cannot be regarded as excessive at all. For all these reasons, we are of the opinion that the appeals have no merit and deserve to be dismissed.

12. The appeals therefore fail and are dismissed with no orders as to cost.

(J.M. Panchal, J.)

(M.C. Patel, J.)

